



BellSouth Telecommunications, Inc.
Legal Department
1600 Williams Street
Suite 5200
Columbia, SC 29201

patrick.turner@bellsouth.com

Patrick W. Turner
General Counsel-South Carolina

803 401 2900
Fax 803 254 1731

March 29, 2005

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Enforcement of Interconnection Agreement between BellSouth
Telecommunications, Inc. and NuVox Communications, Inc.
Docket No. 2005-82-C

Dear Mr. Terreni:

Enclosed for filing are an original and ten copies of BellSouth Telecommunications Inc.'s Complaint to Enforce Interconnection Agreement in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this Brief as indicated on the attached Certificate of Service.

Sincerely,

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record
DM5 #578963

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BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

In Re:)
)
Enforcement of Interconnection Agreement)
between BellSouth Telecommunications, Inc.)
and NuVox Communications, Inc.)
_____)

Docket No. 2005-82-C

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COMPLAINT OF BELL SOUTH TELECOMMUNICATIONS, INC.
TO ENFORCE INTERCONNECTION AGREEMENT

BellSouth Telecommunications, Inc. ("BellSouth") files this Complaint to enforce the audit provisions in Attachment 2, Section 10.5.4 of BellSouth's Interconnection Agreement ("Agreement") with NuVox Communications, Inc. ("NuVox,"), and for appropriate relief for NuVox's breach of the parties' Agreement. Pursuant to that provision, which was agreed to by the parties and approved by the Public Service Commission of South Carolina ("Commission"), BellSouth is entitled to audit NuVox's records to verify the type of traffic being placed over combinations of loop and transport network elements. BellSouth has given NuVox notice of its intent to conduct such an audit and to seek appropriate relief as dictated by the results of such audit. NuVox has failed and refused to allow such audit in contravention of NuVox's obligations under its Interconnection Agreement. In support of this Complaint and BellSouth's request for expedited resolution, BellSouth alleges and says that:

PARTIES

1. BellSouth, a Georgia corporation, is an incumbent local exchange carrier providing comprehensive telecommunications services to its subscribers pursuant to intrastate tariffs on file with the Commission.

2. NuVox, a South Carolina corporation with its principal place of business in South Carolina, is a competing local exchange company (“CLEC”) that has entered into a nine-state Interconnection Agreement with BellSouth and that is currently providing service to end users in several states in which BellSouth provides service, including South Carolina.

3. BellSouth’s representative for purposes of this proceeding is:

Patrick Turner
General Counsel – South Carolina
BellSouth Telecommunications, Inc.
1600 Williams Street, Suite 5200
Columbia, SC 29201-2220

4. Upon information and belief, NuVox’s authorized representative for purposes of this proceeding is:

Hamilton E. Russell, III
NuVox Communications, Inc.
Senior Vice President – Legal and Regulatory Affairs
Southeast Region
Suite 500
301 North Main Street
Greenville, South Carolina 29601

JURISDICTION

5. BellSouth and NuVox have entered into an Interconnection Agreement pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996 (the “federal Act”) that governs their relationship in each of the nine states in which BellSouth operates, including South Carolina. The Interconnection Agreement is presently in force and, although it expired on June 30, 2003, the Interconnection Agreement (as impacted by the self-effectuating provisions of the Federal Communications Commission’s *Triennial Review Remand Order*) continues, by agreement of the Parties, to govern the Parties’ relationship until the Parties enter into a new Interconnection Agreement. The Interconnection Agreement has been submitted to the Commission and has been approved pursuant to section 252(e) of the federal Act.

6. Section 15 of the General Terms and Conditions – Part A of the Interconnection Agreement provides that “if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the Commission, the FCC or a court of law for resolution of the dispute.” This Complaint is a dispute concerning the interpretation and implementation of the Interconnection Agreement and, therefore, it is within the jurisdiction of this Commission. BellSouth attempted to resolve this dispute informally, but was not able to do so because of NuVox’s refusal to comply with the audit provision contained in Section 10.5.4 of the Interconnection Agreement.

7. The Commission has jurisdiction over this matter pursuant to Section 252 of the federal Act and pursuant to state law, including without limitation S.C. Code Ann. §58-9-280(C) as implemented by the Commission.

FACTUAL ALLEGATIONS

8. BellSouth and NuVox are parties to an Interconnection Agreement previously submitted to this Commission and approved pursuant to section 252(e) of the federal Act.

9. Section 10.5.4 of Attachment 2 to that Interconnection Agreement authorizes BellSouth, upon 30 days' notice to NuVox, to audit NuVox’s records to verify the type of traffic being transmitted over combinations of loop and transport network elements purchased by NuVox from BellSouth and to determine whether, based on the audit results, Nuvox is providing a significant amount of local exchange service over the loop and transport combinations. Agreement, Attachment 2, § 10.5.4. (Exhibit A)

10. On March 15, 2002, BellSouth provided 30 days' notice to NuVox of its intent to audit NuVox's circuits pursuant to the Agreement's audit provision.

11. The facilities to be audited were purchased as special access facilities, but were subsequently converted to Enhanced Extended Links (“EELs”) based upon NuVox’s self-certification that such facilities were to be used to provide a “significant amount of local exchange service.”

12. The price that NuVox is to pay for these facilities if they are characterized by NuVox as providing a “significant amount of local exchange service” is less than NuVox would pay if the facilities continued to be treated as special access facilities.

13. Pursuant to the Agreement's terms regarding conversion of special access facilities to EELs, NuVox requested the conversion of approximately 572 circuits in South Carolina starting in 2000.

14. NuVox self-certified, pursuant to the Agreement – Attachment 2's § 10.5.2, that the circuits qualified for conversion because they were used, or would be used, to provide a "significant amount of local exchange service" for its South Carolina customers.

15. In support of its self-certification, NuVox further certified that it was the "exclusive provider of local exchange service" to the end users to be served by the converted circuits.

16. When BellSouth observed, in the months leading up to March 2002, that the local exchange traffic passed from NuVox to BellSouth was inordinately low in Florida and Tennessee, BellSouth began to question whether NuVox's EELs were in compliance with NuVox's self-certification.

17. Accordingly, on March 15, 2002, BellSouth gave its audit notification to NuVox to determine its EELs compliance, as authorized per the Agreement. Exhibit B.

18. NuVox's cooperation is required in order for the audit to proceed. To date, NuVox has refused to allow the audit.

19. After NuVox's refusal to permit its EELs circuits to be audited by BellSouth, BellSouth examined its own records to determine whether NuVox was the exclusive local exchange provider for its end users served by EELs. This review was initially confined to Georgia, and was conducted in the June-July 2003 time frame.

20. BellSouth's review consisted of comparing its retail end user records with the name and location of NuVox's end users served by the Georgia EEL circuits.

21. As a result of the review, BellSouth identified 44 EELs in Georgia that were being used by NuVox to provide service to end users who also receive, or received at that time, local exchange service from BellSouth. This number represented 18% of NuVox's EELs circuits in Georgia at that time.

22. Because BellSouth's review used only its own customers' records for the comparison, BellSouth did not ascertain whether other local exchange carriers also provided local exchange service to NuVox's end users, as was the case with 44 of BellSouth's customers in Georgia.

23. After reviewing the Georgia results, BellSouth extended its examination to the remainder of the states in its region. That examination revealed 271 additional EEL circuits in these other states, including 19 in South Carolina, that NuVox is using, or used, to serve end users who also receive(d) local exchange service from BellSouth. This examination was performed in July 2003.

24. Subsequent examination by BellSouth in early 2004 further revealed that there were, as of January 2004, 363 EELs, including 44 in South Carolina, that NuVox is using, or used, to serve end users who also receive(d) local exchange service from BellSouth. This number represented 10% of NuVox's EELs circuits in South Carolina at the time of the examination.

25. Pursuant to the Agreement, BellSouth is and was entitled to tariffed special access rates for circuits that did or do not comply with NuVox's self-certification.

26. For these circuits, and for any additional circuits that --after an audit -- might be found not to comply with NuVox's self-certification, BellSouth is entitled to the difference in rates as of the date of non-compliance.

27. The audit sought by BellSouth will confirm the facts of NuVox's compliance or non-compliance, and will establish and/or clarify the amount of BellSouth's damages claim(s) against NuVox.

28. NuVox's persistent refusal to permit the audit not only prevents the facts from being confirmed, and proper adjustments to the applicable charges made, but, in light of the findings in the minimal review BellSouth was able to conduct, NuVox's conduct suggests that it is avoiding the audit in an effort to conceal the facts of its non-compliance.

29. NuVox's stated reasons for refusing to allow the audit to commence all deal with matters that are not relevant to the commencement of the audit, or that do not need to be resolved prior to the commencement of the audit.

30. For instance, NuVox insists that BellSouth provide NuVox with a reason for conducting the audit that is satisfactory to NuVox prior to the initiation of the audit. The provision of the Interconnection Agreement authorizing the audit imposes no such requirement. Nor does any other such requirement exist elsewhere. If such a requirement in fact existed, audits would never commence, particularly if the audited company had a reason to want to prevent the audit.

31. Similarly, NuVox objects to BellSouth's proposed choice of auditor, on the grounds of independence. However, the provision of the Interconnection Agreement authorizing the

commencement of the audit does not empower NuVox to stop or delay an audit because it objects to the auditor chosen, on "independence" or any other grounds. There is no requirement in the Interconnection Agreement or in any relevant Commission or FCC order that the parties must agree upon an auditor prior to the commencement of the audit. Again, if a company to be audited could stall or prevent an audit merely by objecting to the auditor selected by BellSouth, no audit would ever occur, particularly if the company involved had a reason to want to prevent the audit.

32. In addition, there are other issues raised by NuVox, including whether NuVox would be required to reimburse BellSouth for the audit (which initially will be at BellSouth's sole expense) should the audit disclose that NuVox has improperly certified that the facilities in question were providing a "significant amount of local exchange service." Such issues would certainly be germane at the conclusion of the audit, should the audit reveal that NuVox in fact had misrepresented that a "significant amount of local exchange service" was being provided using the facilities in question, but cannot be used to block the initiation of such an audit.

33. BellSouth has an unconditional right, after giving 30 days' notice (which it has done), to initiate an audit of NuVox's records. NuVox refused, and continues to refuse, to comply with the notice provided, or to allow the audit to proceed. BellSouth is entitled to commence the audit.

CAUSES OF ACTION

34. The preceding paragraphs in this Complaint are incorporated by reference as though fully set forth herein.

35. By its refusal to permit the audit, of which it has been duly and properly notified, NuVox has breached, and continues to breach, the Agreement (a contract governed by Georgia law).

36. Although BellSouth cannot, due to NuVox's conduct, ascertain the amount of its damages flowing from NuVox's breach of the Agreement, BellSouth asserts that its own review of the circuits in question reveals that it has been damaged, at a minimum, by the loss of special access rates to which it was entitled for all non-compliant circuits in South Carolina, per circuit, from the starting date of NuVox's non-compliance through the present, or such shorter period indicated by cessation of use of the circuit or the cessation of NuVox's non-compliance with its certification for any other reason, such as the termination of service provided by a party other than NuVox.

37. Despite NuVox's past and continuing breach of the Agreement by its persistent refusal to permit BellSouth to audit the circuits in question, NuVox remains under a contractual duty to permit the audit sought by BellSouth. BellSouth continues to want an audit of NuVox's circuits and, thus, NuVox's compliance with the Agreement continues to be required.

REQUEST FOR RELIEF

WHEREFORE, BellSouth requests that the Commission:

1. Enter an order declaring that NuVox has breached, and continues to breach, its Interconnection Agreement with BellSouth by having failed, and by failing, to allow BellSouth to audit NuVox's EELs circuits that NuVox has self-certified as providing "a significant amount of local exchange service."

2. Enter an order requiring NuVox to allow such an audit of its records immediately, or as soon thereafter as BellSouth can arrange to have auditors available, and to cease and desist from any further activity designed to delay, stall, or otherwise obstruct the audit.

3. Enter an order requiring NuVox to cooperate in such audit by providing the auditors selected by BellSouth with appropriate working facilities, and access to any required records in a manner that will allow the timely conduct and completion of the audit in question. The Order should also clarify that BellSouth is authorized to provide the auditor with whatever BellSouth records the auditor may reasonably require in conducting the audit, including records in BellSouth's possession that contain proprietary information of another carrier.

4. Grant BellSouth interest on the amount of the difference between the applicable special access rate(s) and the EEL rates paid by NuVox, per circuit ultimately found to be non-compliant, from the date of non-compliance or any earlier date on which use of the circuits ceased for the circuits identified already by BellSouth, and any circuits later identified as a result of the audit so ordered.

5. Grant BellSouth such other and further relief as the Commission deems fair and equitable.

This 29th day of March, 2005.

Respectfully submitted,



Patrick W. Turner
1600 Williams Street, Suite 5200
Columbia, South Carolina 29201
(803) 401-2900

ATTORNEY FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

EXHIBIT A

fifteen (15) or more circuits from special access to EELs will be provisioned on a project basis. Conversions should not require the special access circuit to be disconnected and reconnected because only the billing information or other administrative information associated with the circuit will change when TCI requests a conversion. The Access Service Request process will be used for conversion requests.

10.5.4 BellSouth may, at its sole expense, and upon thirty (30) days notice to TCI, audit TCI's records not more than one in any twelve month period, unless an audit finds non-compliance with the local usage options referenced in the June 2, 2000 Order, in order to verify the type of traffic being transmitted over combinations of loop and transport network elements. If, based on its audits, BellSouth concludes that TCI is not providing a significant amount of local exchange traffic over the combinations of loop and transport network elements, BellSouth may file a complaint with the appropriate Commission, pursuant to the dispute resolution process as set forth in this Agreement. In the event that BellSouth prevails, BellSouth may convert such combinations of loop and transport network elements to special access services and may seek appropriate retroactive reimbursement from TCI.

10.6 Rates

10.6.1 Georgia

10.6.1.1 The non-recurring and recurring rates for the EEL combinations set forth in 10.3, whether or not such EELs are Existing Combinations, are as set forth in Exhibit A of this Attachment.

10.6.1.2 On an interim basis, for combinations of loop and transport network elements not set forth in Section 10.3, where the elements are not Existing Combinations but are ordinarily combined in BellSouth's network, the non-recurring and recurring charges for such UNE combinations shall be the sum of the stand-alone non-recurring and recurring charges of the network elements which make up the combination. These interim rates shall be subject to true-up based on the Commission's review of BellSouth's cost studies.

10.6.1.3 To the extent that TCI seeks to obtain other combinations of network elements that BellSouth ordinarily combines in its network which have not been specifically priced by the Commission when purchased in combined form, TCI, at its option, can request that such rates be determined pursuant to the Bona Fide Request/New Business Request (NBR) process set forth in this Agreement.

10.6.2 All Other States

10.6.2.1 Subject to Section 10.2.3 and 10.4 preceding, for all other states, the non-recurring and recurring rates for the Existing Combinations of EELs set forth in

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Jeanette B. Mattison, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Complaint to Enforce Interconnection Agreement in Docket No. _____ to be served upon the following this March 29, 2005:

Florence P. Belser, Esquire
General Counsel
Office of Regulatory Staff
Post Office Box 11263
Columbia, SC 29211
(U. S. Mail and Electronic Mail)

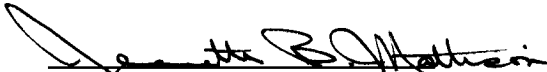
Jocelyn G. Boyd, Esquire
Staff Attorney
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(U. S. Mail and Electronic Mail)

Joseph Melchers
Chief Counsel
S.C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(U.S. Mail and Electronic Mail)

John J. Pringle, Esquire
Ellis Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202
(NewSouth, NuVox, KMC, Xspedius)
(U. S. Mail and Electronic Mail)

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COMMISSION

Hamilton E. Russell, III
NuVox Communications, Inc.
Senior Vice President – Legal and Regulatory Affairs
Southeast Region
Suite 500
301 North Main Street
Greenville, South Carolina 29601
(U. S. Mail and Electronic Mail)



Jeanette B. Mattison

PC Docs # 578834